

Application No. 10/647,819

Response to Office Action dated February 3, 2005

### **REMARKS**

Claims 1 – 69 remain in the application for further prosecution.

#### **Declaration**

The reissue declaration was found to be defective for the following reasons: (1) the declaration left blank and did not identify any submitted amendments to the specification; and (2) the last paragraph of the declaration was unclear in its reference to claim 51.

A newly executed Reissue Declaration is submitted herewith. It is the Applicants' belief that the new Reissue Declaration cures the deficiencies cited by the Examiner and detailed above.

#### **Double Patenting Rejection**

Claims 1-69 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6,427,421.

To overcome this rejection, a Terminal Disclaimer is submitted herewith. This Terminal Disclaimer should not be construed as an admission to the merits of the obviousness-type double-patenting rejections pursuant to Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870 (Fed. Cir. 1991).

#### **Rejections of Claims Based on Formal Matters**

Claims 5, 21, 38, 42, 56, 61, and 68 were rejected under 35 U.S.C. § 112, first paragraph, as being predicated on an insufficient disclosure for sealing the panels of the bag above the fastener. The Applicants respectfully submit that support for this feature is found in at least Column 5, lines 42-52 of U.S. Patent No. 6,279,298, incorporating by reference U.S. Patent No. 6,286,189 ("the '198 Patent"). Specifically, support can be found in Column 6, lines 54-62 of the '198 Patent.

#### **Rejections of Claims Based on Prior Art**

Claims 1-33 and 35-69 were rejected under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 6,138,439 to McMahon et al. (McMahon).

Claim 34 was rejected under 35 U.S.C. § 103(a) as being unpatentable over McMahon.

Application No. 10/647,819  
Response to Office Action dated February 3, 2005

A Declaration has been submitted pursuant to 37 C.F.R. § 1.131. The Declaration establishes that the subject matter of the '819 application was invented prior to the filing date of McMahon.

McMahon was filed on May 21, 1999, less than three months before the priority date of the present application. The inventors state that Exhibits A and B, which include drawings and descriptions of the claimed invention, were developed prior to May 21, 1999. (Decl. ¶¶ 4-5.) Further, the inventors state they diligently worked on this technology and on developing this patent application, as evidenced by Exhibits C, D, and E to the Declaration. (*Id.* at ¶¶ 7-9.) Hence, it is clear that the subject matter disclosed and claimed in the present application was invented before May 21, 1999. Therefore, the Applicants respectfully request that the 35 U.S.C. § 103(a) and 35 U.S.C. § 102(e) rejection based on McMahon be withdrawn.

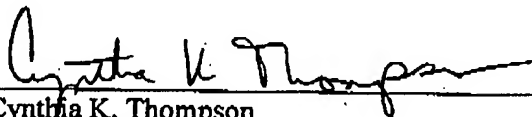
#### Conclusion

It is the Applicants' belief that all of the claims are now in condition for allowance, and action towards that end is respectfully requested.

If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at the number indicated.

Respectfully submitted,

Date: November 14, 2005

  
Cynthia K. Thompson  
Reg. No. 48,655  
Jenkins & Gilchrist  
225 W. Washington St.  
Suite 2600  
Chicago, IL 60606  
(312) 425-8637  
Attorney for Applicant